

*a***CREDIT CORP. (M) BHD.****v.****MICHAEL CHEONG HOON LAM**

HIGH COURT MALAYA, KUALA LUMPUR

HASHIM YEOP SANI J

*b*

[CIVIL APPEAL NO. 109 OF 1981]

12 MAY 1982

**HIRE PURCHASE:** *Agreement in respect of a motor vehicle - Public auction of the car - Hire purchase price unpaid - Conversion - Meaning of - Damages - Whether the appellant had the right to the possession.*

*c*

A hire purchase agreement was executed between the appellant a finance company and one Vadivilu s/o Sundram in respect of a motor car. Sometime in 1980 the respondent obtained judgment against the said Vadivilu for a sum of RM10,000.

*d*

In pursuance of the said judgment, the respondent obtained an order of execution from the Court and on 24 May 1980 the Court's bailiff auctioned the car for RM12,400 of which RM10,197 was paid to the respondent. At the time of the auction Vadivilu had still to pay the appellant a hire purchase price of RM14,443.84.

The appellant sued the respondent for conversion and claimed for loss and damage to the amount of RM14,443.84, due to them in the hire purchase agreement. The claim was dismissed by the learned Court President for the following reasons:

*e*

(a) The respondent had taken all necessary steps to find out the true owner. Search at the RIMV indicated that the registered owner of the said car was Vadivilu.

(b) Since the appellant was never in possession of the said car, there could be no conversion.

*f*

(c) The judgment obtained by the respondent was not irregular and that the auction was done according to law and that the bailiff did not act in bad faith.

Hence this appeal.

There is no dispute as to the ownership of the car in question, but the crux of the issue was whether the appellant also had a right to the possession of the said car at the time of the auction.

*g***Held:**

[1] In a hire purchase agreement there can be a provision where a finance company can acquire a right to immediate possession as soon as there is any breach of the agreement. In this case the evidence showed that the finance company was not entitled to the possession of the car at the time of the auction.

*h*

[2] In an action for conversion the claimant must also show that it has the right of possession at the time of sale.

*[Appeal dismissed with costs.]*

**Cases referred to:**

*Lancs and Yorks Ry. v. MacNicol [1919] 88 LJKB 601*

*i*

*Jelks v. Hayward [1905] 2 KB 460*

*For the appellant - Cheong*

*For the respondent - Teh*

## JUDGMENT

## Hashim Yeop Sani J:

The facts leading to the appeal are not in dispute. The appellant who was plaintiff in the Sessions Court Kuala Lumpur, was a finance company. A hire purchase agreement in respect of a motor vehicle registration No. WT 2039 was executed between the plaintiff and one Vadivilu s/o Sundram. Some time in 1980 the respondent (defendant in the Sessions Court) obtained judgment against the said Vadivilu in the Magistrate's Court for a sum of RM10,000 together with interests and costs. In pursuance of the said judgement, the respondent obtained an order of execution from the Court and on 24 May 1980 the Court bailiff sold the said car at a public auction for a sum of RM12,400. The sum of RM10,197 was paid to the respondent from the proceeds of the sale. At that time the hire-purchase price still unpaid by the said Vadivilu to the appellant was RM14,443.84

The appellant sued the respondent for conversion in the Sessions Court. The appellant alleged that the respondent had converted the said vehicle for his own use and by reason whereof the appellant had suffered loss and damage. The sum claimed was the sum in the hire purchase agreement which as on that day remained unpaid as damages for conversion together with interests thereon.

At the conclusion of the hearing the President dismissed the claim with costs. The appeal is against that order.

The reasons given in the grounds of judgment of the learned President are briefly as follows. Firstly, it was the President's opinion that the defendant had done all he could to find out who the true owner of the said motor vehicle was. His solicitors had written to the RIMV office and was informed that the registered owner of the vehicle was the said Vadivilu. Secondly, the President considered that since the plaintiff was never in possession of the vehicle there could be no conversion. Finally, the President also thought that there could be no conversion because the judgment obtained was done according to law and that the bailiff was not acting in bad faith.

Of course all these grounds of the learned President were attacked in the memorandum of appeal. It was contended by the appellant that the President erred in law.

- (a) In failing to hold that the respondent's act of levying execution by seizure and sale of the said motor vehicle constituted an act of conversion;
- (b) In holding that the absence of *mala fides* was a sufficient defence to the act of conversion; and finally
- (c) In holding that the fact that the defendant was not in actual possession of the said motor vehicle constituted a sufficient defence to the act of conversion.

None of these grounds however touched the core of the problem.

The law on conversion as can be gathered from the textbooks would seem to be as follows. Conversion is act of deliberate dealing with a chattel in a manner inconsistent with another's right whereby that other is deprived of the use and possession of it. In a claim for conversion it is not necessary for the claimant to prove that the defendant intends to question or deny the plaintiff's rights. It is enough that the defendant's conduct is inconsistent with those rights. Thus anyone who deals with goods in a manner inconsistent with the right of the true owner is guilty of wrongful conversion provided there is an intention on the part of the person so dealing with them to negative the right of the true owner or to assert a right inconsistent therewith. A conversion must be more than a mere trespass. There may be

*a* conversion of goods even though the defendant has never been in possession of the goods if he has acted in such a way as to deny absolutely the right of the owner or to assert a right inconsistent with the owner's right. Atkin J described the law in a nutshell in *Lancs and Yorks Ry. v. MacNicoll* [1919] 88 LJKB 601:

*b* It appears to me plain that dealing with goods in a manner inconsistent with the right of the true owner amounts to a conversion, providing it is also established that there is an intention on the part of the defendant in so doing to deny the owner's right or to assert a right which is inconsistent with the owner's right.

*c* There have been many reported cases and actions for conversion following sales under orders of execution by court bailiffs. One such case was the case of *Jelks v. Hayward* [1905] 2 KB 460. The goods involved there were furniture taken in execution by the bailiff and sold under the execution and the proceeds paid in Court and the furniture delivered to the purchaser. It was held *inter alia* that the sale by the bailiff amounted to an act of conversion for which he was responsible in damages. An important question was posed by Kennedy J in his judgment beginning at p. 467 where the following appears:

*d* In order to maintain an action of conversion for the subsequent sale by the bailiff, there must be a right in the plaintiff to immediate possession of, as well as a property in, the goods. In the present case there is no question that the goods sold were the property of the respondents: had they also a right to their possession at the time of the sale?

*e* In my opinion for the proper application of the law of conversion in this appeal it would be necessary also to ask the same question, that is, since there is no dispute whatsoever on the ownership of the motor vehicle WT 2039 being claimed by virtue of the hire purchase agreement by the appellant, the next question to ask is: had the appellant also a right to the possession of the motor vehicle at the time of the sale by the bailiff?

*f* That would seem to be the crux of the question here. Under a hire purchase agreement there can be a provision where the finance company can acquire a right to immediate possession as soon as there is any breach of the agreement without giving any notice to terminate the agreement. Once that happens the finance company is entitled to sue for conversion if the motor vehicle is sold without its consent.

*g* This was what happened in *Jelks v. Hayward* (*supra*). The hire purchase agreement in that case contained a clause giving the owner the right without previous notice to terminate the hiring and, to take possession of the furniture if it should at any time be seized or taken in execution. In a hire purchase transaction there are two proprietary interests involved viz. the finance company's interests and the hirer's interests. If the hirer wrongfully sells the goods in breach of the agreement then the finance company is entitled to recover what it has lost by reason of his wrongful act. But in the present case nothing of the sort happened. There is no evidence at all that the hirer had committed any breach of the hire purchase agreement or that by virtue of such breach the appellant was entitled to possession of the vehicle immediately before the sale by the bailiff under the execution. The only evidence available on the position of the appellant as the finance company in the hire purchase agreement was the evidence of PW2, the manager of the firm. According to PW2 the said Vadivilu started paying the instalments on the car from November 1979. He defaulted after February 1980. A notice under the Hire Purchase Act was sent to the said Vadivilu on 6 May 1980 and he was given 21 days to pay and it was only after the expiry of the 21 days that the appellant was entitled under the law to repossess the said motor vehicle. All these is clearly stated in the evidence of PW2 in cross-examination. It did not seem however to be disputed that the court bailiff seized the car and finally auctioned it on 24 May 1980, that is, before the expiry of the 21 days after the notice under the Hire Purchase Act was sent to the said Vadivilu.

The claim for conversion could not have succeeded under the circumstances of this case because according to the evidence the finance company was not entitled to the possession of the motor vehicle at the time of the sale by the bailiff. In my view it was not enough for the appellant to show that it was the finance company under the hire purchase agreement and that it was the true owner of the motor vehicle under the agreement. Since under a hire purchase agreement there are two proprietary interests involved, that is, the appellant's interests and the hirer's interests, in an action for conversion the claimant must also show that it has the right of possession at the time of the sale.

For the above reasons, the appeal is dismissed with costs.

Also found at [1982] CLJ 314

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